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COMMITTEE ON THE PEACEFUL USES
OF OUTER SPACE
Legal Subcommittee
Thirtieth session
New York, 25 March-12 April 1991
Agenda item 5

DRAFT REPORT OF THE CHAIRMAN OF THE WORKING GROUP ON AGENDA ITEM 5 (CONSIDERATION OF THE LEGAL ASPECTS RELATED TO THE APPLICATION OF THE PRINCIPLE THAT THE EXPLORATION AND UTILIZATION OF OUTER SPACE SHOULD BE CARRIED OUT FOR THE BENEFIT AND IN THE INTERESTS OF ALL STATES, TAKING INTO PARTICULAR ACCOUNT THE NEEDS OF DEVELOPING COUNTRIES)

1. On 25 March 1991 the Legal Subcommittee re-established its Working Group on agenda item 5.

2. The Working Group had before it the report of the Legal Subcommittee on the work of its twenty-ninth session in 1990 (A/AC.105/457), which contained, in chapter III, a summary of the debate under this agenda item.

3. The Working Group also had before it the responses received (A/AC.105/C.2/15 and Add.1-13) to a note verbale dated 26 September 1988, addressed by the Secretary-General to the States Members of the United Nations inviting them to submit their views as to the priority of specific subjects under agenda item 5, and to provide information on their national legal frameworks, if any, relating to the development of the application of the principle contained in article 1 of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies.

4. The Working Group additionally had before it the responses received (A/AC.105/C.2/16 and Add.1-10) to a note verbale dated 20 December 1989, addressed by the Secretary-General to the States Members of the United Nations inviting them to submit their views on the subject of international agreements

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that Member States have entered into that are relevant to the principle that the exploration and use of outer space shall be carried out for the benefit and in the interests of all countries, taking into particular account the needs of developing countries.

5. The Working Group further had before it a compilation of the readily available multilateral agreements identified in the responses to the above request of the Secretary-General for information on such agreements, as well as lists of the States parties to those agreements.

6. In his introductory statement, the Chairman suggested certain points of reference for the discussion, namely, that, while article I of the 1967 Outer Space Treaty provided that the exploration and utilization of outer space should be carried out for the benefit and in the interests of all countries, the wording of agenda item 5 supplemented that article by providing that particular account should be taken of the interests of developing countries; that the work of the Working Group should be goal-oriented, i.e., efforts should be made after deliberation to reach consensus on giving a concrete expression to the concept of international cooperation and equity, and thereby achieving a progressive development of international space law; and that during the debate delegations might further elaborate on their above-mentioned responses submitted to the Secretariat, while other delegations, who had not yet responded to the Secretary-General's requests, might do so during the course of the discussions in the Working Group.

7. Some delegations expressed the view that it might be desirable for the Working Group to focus on the central issue relating to the subject under discussion, i.e., the principle enshrined in article I of the 1967 Outer Space Treaty. The view was expressed that the above responses demonstrated that the basis of the policy of several States was adherence to not only the outer space treaties concluded under the auspices of the United Nations, but also to a number of other treaties, and that the national legislations of those States had been enacted bearing in mind international cooperation and the goal of sharing outer space benefits. Furthermore, the development of mechanisms for financing international cooperation were of great importance. Some delegations expressed the view that the Working Group should produce legal principles that would give guidance to the international community on achieving international cooperation and on sharing equitably and without discrimination the benefits derived from the exploration and use of outer space.

8. Some delegations expressed the view that the primary objective of the Working Group should be to make operational a system of international cooperation under which developing countries could obtain access to outer space benefits. Those delegations believed that two principles should, in this connection, be respected, namely, the equitable sharing of outer space benefits and the preservation of the space environment. They felt that legal principles regulating the exchange of goods and services required for outer space activities should be formulated, and a market of space technology should be established. In the view of those delegations, the principles should

cover, inter alia, such matters as equitable access to those goods and services by all States without discrimination, fair compensation payable for such access, and the establishment of a system for the transfer of space technology.

9. The view was expressed that as this agenda item was of overall concern involving the interests of all States, all delegations should actively participate in the discussions in the spirit of international cooperation. The view was also expressed that article I of the 1967 Outer Space Treaty embodied a general principle which the Working Group needed to cast in more specific terms dealing with all aspects of space technology in a comprehensive and not piecemeal way, and that the Working Group could start with a consideration of national legislations and international agreements concluded by States in order to identify the questions that needed to be addressed. The view was also expressed that discussions should lead to specific results, e.g., to a working document reflecting the results of the deliberations.

10. The view was expressed that in 1989 the Subcommittee had decided that the Working Group on this agenda item should commence its work by considering the information submitted by States with regard to national legal frameworks and international agreements relevant to item 5 of the agenda. The view was also expressed that responses submitted by States demonstrated the existence of a currently well-functioning mechanism for sharing the benefits of outer space activities, and that an analysis of the information available would assist the Working Group in resolving the issues before it.

11. Some delegations outlined their efforts to promote international cooperation with developing countries in the field of space technology through international, regional and bilateral treaties. In particular, they referred to such areas of cooperation as international manned space flights, joint scientific research involving biological satellites, provision of launching services to foreign States and international organizations under mutually acceptable terms and fundamental research on outer space and the solar system.

12. The view was expressed that it would be helpful if the Secretariat could prepare for the next session of the Subcommittee a summary of all information submitted by States in relation to this item, identifying similarities and differences in approach and highlighting common denominators which could serve as a basis for further discussions. In reply, the view was expressed that such a document was not necessary, but that there could be no objection to the Secretariat assembling all the responses in a single document to facilitate reference thereto.

13. The view was expressed that, as there was no working paper yet on which to base the discussion, delegations could have a free exchange of views in order to reach an agreed understanding of the "common benefit" concept, and of how the various types of benefits from space technology, e.g., in the fields of remote sensing or broadcasting, might be shared. The view was also expressed that while there existed some mechanisms for implementing the principle of equitable access to outer space benefits on the international,

regional and bilateral level, those mechanisms were inadequate and needed to be improved as well as supplemented by new mechanisms to be developed. Furthermore, the view was expressed that the principle of equitable access to outer space benefits needed to be elaborated with reference to specific areas, e.g., to training of personnel, provision of hardware (especially of surface facilities), etc.

14. Some delegations expressed the view that working paper A/AC.105/C.2/L.162 submitted to the Subcommittee at its twenty-sixth session in 1987 by the Group of 77 was a useful starting-point for the deliberations of the Working Group and contained some interesting ideas on the sharing of outer space benefits. The view was also expressed that the ideas contained in the letter dated 20 March 1987 from the representative of Chile addressed to the Secretary-General (A/42/185) were still valid and could be used as guidelines for the consideration of this agenda item.

15. The view was expressed that the current session of the Subcommittee had been a productive one as regards agenda item 5 at two levels: first, there had been interesting statements on the State practice of international cooperation between developed and developing countries in the field of outer space activities, and that practice deserved close attention; and secondly, concrete proposals for the future direction of the work had been made by some delegations.

16. The view was expressed that agenda item 5 was related not only to article I of the 1967 Outer Space Treaty, which stresses the need for international cooperation in the exploration and utilization of outer space for the benefit of all States, but also to article IX of that Treaty, which requires the parties to carry out their space activities keeping in mind the need to avoid adverse changes in the space environment and the need to avoid harmful interference with the activities of other States in the peaceful exploration and use of outer space. Accordingly, both articles I and IX of the Outer Space Treaty could serve as a basis for the work of the Working Group on agenda item 5.

17. Some delegations expressed the view that there already existed certain space activities which benefited all countries, such as the provision of meteorological data and data used for agricultural purposes, space communications, television broadcasting and search and rescue activities.

18. Some delegations indicated that they would be co-sponsoring and submitting at a later stage during the current session of the Subcommittee a working paper containing ideas relating to agenda item 5 in the hope that it would serve as a basis for discussion during the next session of the Subcommittee. Those delegations explained that the intention of the drafters of the paper was not simply to repeat the concept embodied in article I of the 1967 Outer Space Treaty but to make it more specific with a view to making the principle of international cooperation more effective. At the same time, they said it was not their intention to reinterpret article I of that instrument. They noted the existence at present of inequalities among States in the

exploration of outer space and the utilization of the benefits of such exploration and expressed the hope that the adoption of the ideas contained in the working paper would make possible the just and equitable enjoyment by all States, without discrimination, of the benefits of outer space, bearing in mind the objective of the preservation of the space environment.

19. Subsequently, the Brazilian delegation provided an informal introduction to the working paper, which was not an official document, explaining its most salient points in detail. Those points had to do with the concept of international cooperation and equitable access and exclusively peaceful uses of outer space. In that connection, some delegations commented favourably and expressed their satisfaction with the working paper.

20. The Working Group after discussion requested its Chairman to prepare, for the next session of the Subcommittee, in 1992, a paper summarizing in an analytical manner the views and information contained in the responses of Member States to the two notes verbales of the Secretary-General (A/AC.105/C.2/15 and addenda, and A/AC.105/C.2/16 and addenda; see paras. 3 and 4 above).

21. The Working Group held its final meeting on 10 April 1991, when it considered and approved the present report.